IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P.No. 5117 of 1983
Date of decision: October 27, 2006

Raj Kumar Vijay Kumar and another

v.

The Assessing Authority, Kurukshetra

Present: Mr. V.K. Jain, Senior Advocate with
Mr. Aman Priye Jain, Advocate for the petitioners.
Ms.Ritu Bahri, Deputy Advocate General, Haryana
for the respondent.

CORAM: Hon'ble Mr. Justice Rajesh Bindal

1. Whether Reporters of local papers maybe allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, J. (Oral)

The petitioners, who were L-2 licensees under the Punjab Excise Act, 1914, had approached this Court challenging the order of assessment dated 15.3.1983, passed under the Haryana General Sales Tax Act, 1973 (for short, `the Act') for the period from 1.10.1981 to 31.3.1982 without availing alternative remedy of appeal available to them under the provisions of the Act.

In the written statement filed on behalf of the respondent, a preliminary objection has been taken that the writ petition is not maintainable as the petitioners have failed to avail of the effective alternative remedy under the provisions of the Act. To support the contention, judgment of Hon'ble the Supreme Court in Titaghur Paper Mills Co.Ltd. v. State of Orissa, AIR 1983 SC 693 has been relied upon.

The only plea raised by the petitioners to bye-pass the remedy of appeal is that the petitioners were not afforded effective opportunity of hearing before passing the impugned order and that Shri Chander Bhan, who appeared before the Assessing Authority was not authorised to appear. On the other hand, the plea of learned State counsel is that the plea raised by the petitioners is not

tenable as on one occasion, Shri Sohan Lal, Accountant of the firm, had also appeared and sought time. These being disputed questions, which should not be gone into in the exercise of writ jurisdiction.

The question as to whether the remedies of appeal etc. available under the Taxing Statutes are effective alternative remedies is no longer *res integra*.

Very recently in U.P.State Spinning Co. Ltd. v. R.S.Pandey and another, (2005) 8 SCC 264, Hon'ble the Supreme Court observed as under:

> "However, a writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Industrial Disputes Act, 1947 unless exceptional circumstances are made out. When the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interference under Article 226 except when a very strong case is made out for making departure. The person who insists upon such remedy can avail of the process as provided under the statute."

Following the dictum of law laid down in the above referred judgment, the petitioners are relegated to alternative remedy of statutory appeal under the Act. However, since during the pendency of the writ petition in this Court, the period for filing the appeal has already expired and the petitioners be not prejudiced, I direct that in case an appeal is filed within four weeks from the date of receipt of copy of this order, the same shall be decided on merits subject to fulfilment of conditions for entertainment of appeal.

The writ petition is disposed of in the manner indicated above with no order as to costs.

(Rajesh Bindal)
Judge

27.10.2006
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